

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KIPP GIBBS, individually and on
behalf of all other similarly situated,

Plaintiff,

v.

SLM CORPORATION, SALLIE MAE
SERVICING L.P., NELLIE MAE, USA
FUNDS, and GENERAL REVENUE
CORPORATION,

Defendants.

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U.S. DISTRICT COURT
DISTRICT OF MASS

Civil Action No. 03-CV-12565-PBS

**DEFENDANTS' MOTION TO DISMISS
THE AMENDED COMPLAINT (1/5/04)**

Pursuant to Fed. R. Civ. P. 12(b)(6), the Defendants SLM Corporation, Sallie Mae Servicing, L.P., Nellie Mae, United Student Aid Funds, Inc ("USA Funds"), and General Revenue Corporation (collectively the "Defendants") hereby move to dismiss the Plaintiff's Amended Complaint 1/5/04 ("Amended Complaint").

As set forth in the accompanying memorandum of law, the Plaintiff's claims must be dismissed because:

- (i) The Plaintiff does not have any private right of action to state a claim under the regulations promulgated by the United States Department of Education under the Higher Education Act of 1965, as amended, or the Mail Fraud Statute (18 U.S.C §1341);

- (ii) Many of the Plaintiff's claims are preempted by Federal Law, which provides a detailed framework for the administration and regulation of federally insured student loans; and,
- (iii) The Plaintiff has failed to allege facts to support the requisite elements of his claims—and in most instances has failed to even allege the requisite elements of his claims.

WHEREFORE, the Defendants respectfully request that the Amended Complaint be dismissed with prejudice.

Dated: January 26, 2004

Respectfully submitted,

SALLIE MAE DEFENDANTS

By their attorneys,



Peter E. Gelhaar (BBO #188310)
Matthew N. Kane (BBO #636801)
Donnelly, Conroy & Gelhaar, LLP
One Beacon Street, 33rd Floor
Boston, MA 02108
(617) 720-2880

CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the above document was served upon the attorney of record for each party by ^{overnight} mail/by hand

Date: 1/26/04 Matthew N Kane

DONNELLY, CONROY & GELHAAR, LLP

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33RD FLOOR
BOSTON, MA 02108

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Matthew N. Kane
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January 26, 2004

BY HAND

Civil Clerk's Office
United States District Court
for the District of Massachusetts
One Courthouse Way
Boston, MA 02210

Re: *Kipp R. Gibbs v. SLM Corp., Sallie Mae Servicing, L.P., Nellie Mae, USA Funds, and General Revenue Corporation*
Civil Action No. 03-CV-12565-PBS

Dear Sir or Madam:

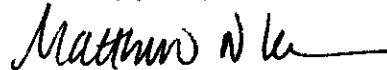
We have enclosed for filing in the above-referenced matter:

- (i) Defendants' Motion to Dismiss the Amended Complaint (1/5/04);
- (ii) Memorandum In Support Of Defendants' Motion To Dismiss The Amended Complaint (1/5/04);
- (iii) Affidavit of Matthew N. Kane; and,
- (iv) Defendants' Motion to Stay Discovery.

Please acknowledge receipt of these documents by stamping the enclosed copy of this letter and returning it to me via the messenger.

Thank you for your attention to this matter.

Very truly yours,


Matthew N. Kane

Enclosures

cc: Kipp R. Gibbs (via overnight mail w/enc.)
Peter E. Gelhaar, Esq.